



TAX FACTS

From the
State of Hawaii, Department of Taxation

May, 2001

Hawaii Tax Appeals

2001-1

Taxpayers who do not agree with the assessment of State taxes by the Department of Taxation (Department) are provided with rights of appeal. There are avenues of appeal that contain different requirements and opportunities for taxpayers. The requirements are specifically stated in the statutes and careful adherence to the requirements is necessary in order to perfect an appeal. Throughout this publication, actions of the Department will be referred to generically as "assessments". Appeal choices are taxpayers' decisions, and this publication is not intended to influence these decisions in any way. Taxpayers requiring additional guidance on appeals are advised to consult with their tax advisors.

This publication is intended to be a general overview of the appeal process available to taxpayers. The following question and answer series is intended to provide general information on Hawaii tax appeals.

1. What is the first opportunity to appeal an assessment by the Department?

The first opportunity to appeal an assessment by the Department is after the issuance of a proposed notice of assessment. This notice is usually appealed by way of an informal conference within thirty days from the date of the proposed notice of assessment. At this informal conference, the taxpayer may submit additional information or request a discussion with the examiner, collector, or auditor; the examiner, collector, or auditor's supervisor; or a member of senior management regarding the proposed adjustments. If no changes are made as a result of the conference, a final notice of assessment is issued. The final notice of assessment is often referred to as the "second" notice. This establishes the liability for the assessed taxes.

2. If an informal conference does not produce a result which is satisfactory to me, what are my options?

If an informal conference results in the issuance of a final notice of assessment with which you do not agree, you may appeal the assessment with the Board of Review of your taxation district, the Board of Review of the First Taxation District (Oahu), or the Tax Appeal Court. Appeals must be made within thirty days of the mailing (date stamped on the notice) of the final notice of assessment.

3. What are the differences between the Board of Review and the Tax Appeal Court?

The Board of Review is an informal forum where the rules of evidence are not followed. All evidence and information needed by the Board of Review to make a decision are obtained through informal exchanges or hearings. The taxpayer may be accompanied or represented by the taxpayer's accountant or attorney in the hearing before the Board. The payment of disputed taxes is not required for taxpayers who are appealing to a Board of Review for appeals filed after June 8, 2000. There are no costs of appeal to be paid by the appealing taxpayer. The Board cannot hear questions involving the Constitution or laws of the United States. Board of Review decisions can be appealed to the Tax Appeal Court within thirty days of a written decision by the Board of Review.

The Tax Appeal Court is a court of record, and all filings, proceedings, etc., follow established court procedures and rules. Appealing taxpayers, except corporations, may represent themselves, or they may be represented by attorneys. The appropriate cost of appeal must be paid by the appealing taxpayer to the tax appeal court upon filing of the appeal.

4. What if I am not satisfied with the decision rendered?

A written decision by a Board of Review can be appealed to the Tax Appeal Court within thirty days of the date of the decision. A decision by the Tax Appeal Court can be appealed to the Hawaii Supreme Court. The Hawaii Supreme Court may assign the case to the Intermediate Court of Appeal.

5. Can I file an appeal of a tax assessment with the federal court?

No. Since state avenues of appeal are available, you must use the state avenues of appeal. Taxpayers exhausting their appeal rights through the state appeal system may appeal their case to the United States Supreme Court. There must be a federal question involved in order for the United States Supreme Court to accept the appeal.

6. How do I file an appeal with the Board of Review?

You must file a Taxpayer Notice of Appeal form with the tax assessor for the appropriate district or the First Taxation District (Oahu). The assessor will notify the appropriate Board of Review and forward the Notice of Appeal to that Board.

7. Are the Boards of Review associated with the Department?

The Boards of Review are attached to the Department for administrative support only and are independent bodies that conduct all hearings and make decisions independently.

8. How do I file an appeal with the Tax Appeal Court?

An appeal to the Tax Appeal Court is filed by following the Tax Appeal Court's Rules. This generally involves the filing of a written notice of appeal and paying the appropriate taxes with the Tax Appeal Court located on Oahu. After filing with the Tax Appeal Court, an official, court-stamped copy of the Notice of Appeal must also be submitted to the assessor in the district where the action was taken.

The Tax Appeal Court's Rules are available on the Internet at www.state.hi.us/jud/rtac.htm.

9. Is there an alternative method for handling my appeal in the Tax Appeal Court?

Yes. A taxpayer with an assessment of taxes of less than \$1,000, excluding penalties and interest, can elect to use the small claims procedure instead of the regular procedure. Proceedings within the small claims procedure are less formal than under the regular procedure. The decision of the Tax Appeal Court cannot be appealed through the small claims procedure.

The regular appeal procedure involves more formal adherence to the Tax Appeal Court's Rules. The decision under this procedure can be appealed to the Hawaii Supreme Court.

10. If I am not satisfied with the decision of the Tax Appeal Court, when must I file an appeal to the Hawaii Supreme Court?

You must file an appeal with the Hawaii Supreme Court within thirty days after the filing of the decision of the Tax Appeal Court.

11. If I do not appeal an assessment within thirty days of the mailing date of the notice of assessment, what can I do?

If the assessment has not yet been paid, you can pay the disputed taxes under the provisions of section 40-35, Hawaii Revised Statutes (HRS). This involves paying the tax under protest with an accompanying notice in writing informing the Department that the payment is made under protest. To recover the payment made under protest, a suit (complaint) must be filed with the Tax Appeal Court within thirty days of the payment of the tax. The established Tax Appeal Court's Rules are then used to hear the matter. There is no option to file an appeal with a Board of Review.

Section 40-35, HRS, can be used instead of the appeal provisions under the tax chapters. However, you should be aware that section 40-35, HRS, does not cover all situations but only those situations where payments of disputed tax amounts are involved; i.e., it cannot be used in situations involving denied refunds, etc.

12. Can an appeal of a decision under the provisions of section 40-35, HRS, be made to the Hawaii Supreme Court?

Yes, the normal appeal procedures of a decision of the Tax Appeal Court apply. Therefore, an appeal to the Hawaii Supreme Court must be filed within thirty days after the filing of the decision of the Tax Appeal Court.

13. Does the filing of an appeal with a Board of Review or Tax Appeal Court suspend or stay the collection of an assessment if the appealing taxpayer does not pay the disputed amount as required under the tax appeal statute?

The payment of disputed taxes is not required for taxpayers who are appealing to a Board of Review. The payment of the disputed taxes is required to perfect an appeal to the Tax Appeal Court. If the tax is not paid, the appeal is not perfected and the liability for the assessed taxes is outstanding. As such, appropriate collection actions for the delinquent taxes can be pursued. An individual taxpayer, however, may file an appeal with the Tax Appeal Court without paying the net income tax provided that (1) the total tax

liability does not exceed \$50,000 for all tax years and (2) the taxpayer would be irreparably injured by payment of the tax.

An appeal of disputed taxes only covers those taxes covered under the appeal filed. Therefore, if an appeal is properly filed for only one of three assessed years, the remaining years' taxes which are not appealed, if not paid within twenty days of the mailing of the final notice of assessment, are delinquent and collection actions can be taken.

14. How does the Taxpayer Advocate fit in the appeal process?

The Taxpayer Advocate can request the suspension of the sending of a final notice of assessment but cannot suspend the running of the thirty-day time period within which to file an appeal of a mailed final notice of assessment. Taxpayers interested in preserving their appeal rights under the tax chapters must diligently monitor the thirty-day appeal period.

STATE DISTRICT TAX OFFICE ADDRESSES & TELEPHONE NUMBERS

Website (Forms & Information)

www.state.hi.us/tax

Recorded Tax Information

808-587-1234 and press 7700

Forms by Fax/Mail

808-587-7572

Toll-Free: 1-800-222-7572

Telephone Devices for the Deaf (TDD)

Tax Service & Processing

808-587-1418

Toll-Free: 1-800-887-8974

Oahu District Tax Office

830 Punchbowl Street
P. O. Box 259
Honolulu, HI 96809-0259

Telephone No.: 808-587-4242
Jan.-April 20: 808-587-6515
Toll-Free: 1-800-222-3229
Fax No.: 808-587-1488

Maui District Tax Office

54 South High Street #208
P. O. Box 1169
Wailuku, HI 96793-6169

Telephone No.: 808-984-8500
Fax No.: 808-984-8522

Hawaii District Tax Office

75 Aupuni Street #101
P. O. Box 833
Hilo, HI 96721-0833

Telephone No.: 808-974-6321
Fax No.: 808-974-6300

Kauai District Tax Office

3060 Eiwa Street #105
Lihue, HI 96766-1889

Telephone No.: 808-274-3456
Fax No.: 808-274-3461